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Counsel to Sevana Bioenergy LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

RIALTO BIOENERGY FACILITY, LLC,

Debtor and Debtor in Possession.

Case No. 23-01467-CL11

Chapter 11 Case

**DECLARATION IN SUPPORT OF
ORDER APPROVING THE FREE
AND CLEAR SALE OF ASSETS TO
SEVANA BIOENERGY LLC**

Sale Hearing: May 30, 2024

2:00 p.m. (Pacific Time)

Courtroom 1

325 West F Street

San Diego, CA 92101

1 I, Steve Compton, hereby declare, under penalty of perjury, the following:

2 1. I submit this declaration (the “**Declaration**”) in connection with, and in support of,
3 entry of an order approving the Asset Purchase Agreement, dated as of May 20, 2024 (as may be
4 amended, supplemented, or modified from time to time in accordance with its terms, the “**APA**”)
5 by and among Rialto Bioenergy Facility, LLC, the chapter 11 debtor and debtor-in-possession
6 (the “**Debtor**”) and Sevana Bioenergy LLC (the “**Buyer**”), and the transactions contemplated
7 thereunder, including the sale of the Purchased Assets (as defined in the APA) to Buyer, free and
8 clear of all liens, claims, encumbrances, and other interests pursuant to sections 363 and 365 of
9 title 11 of the United States Code (the “**Bankruptcy Code**”).
10

11 2. I am over the age of 18 and am authorized to make this Declaration on behalf of
12 the Buyer. Except as otherwise indicated, all facts set forth in this Declaration are based on my
13 personal knowledge, information provided to me, my review of relevant documents, and/or my
14 experience. If called to testify, I would testify competently to the facts set forth in this
15 Declaration.
16

17 **Good Faith and No Successor Liability**

18 3. The Buyer complied, in good faith, in all respects with the order [ECF No. 372] (as
19 amended pursuant to ECF Nos. 462, 525, 548, and 570, collectively, the “**Bidding Procedures**
20 **Orders**”),¹ establishing Bidding Procedures to govern the sale of substantially all of the Debtor’s
21 assets. The Buyer, their management, board of directors, employees, agents, advisors, and
22 representatives participated in the bidding process in good faith and without collusion or fraud of
23 any kind. The Buyer subjected its bid to competitive bidding in accordance with the Bidding
24
25
26

27 ¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the
28 Bidding Procedures Orders or the APA, as applicable.

1 Procedures and was designated the Successful Bidder in accordance with the Bidding Procedures
2 and the Bidding Procedures Orders.

3 4. None of Sevana Bioenergy LLC are “affiliates” or “insiders” of the Debtor and no
4 common identity of incorporators, members, directors, or controlling stakeholders exist between
5 Sevana Bioenergy LLC, on the one hand, and the Debtor, on the other hand.
6

7 5. At all times during this sale process Buyer’s communications and negotiations
8 with the Debtor, including those of Buyer’s representatives and advisors, have been in good faith
9 and the APA was negotiated, proposed, and entered into by the parties in good faith, without
10 collusion, and from an arm’s length bargaining position. Buyer will not consummate the
11 transactions contemplated by the APA if: (i) the sale of the Purchased Assets is not free and clear
12 of all liens, claims, and (ii) Buyer is not provided with the successor liability protections and
13 injunctions contained in the Sale Order.
14

15 **Adequate Assurance of Future Performance**

16 6. As part of the sale of the Transferred Assets, the Debtor may assume and assign
17 certain executory contracts and unexpired leases to Buyer. Buyer has the necessary financial
18 capacity to consummate the transactions contemplated by the APA and perform under all the
19 Assigned Contracts, Permits and Licenses, Assigned Personal Property Leases, and Assigned
20 Real Property Leases described on the schedules attached (or to be attached) thereto.
21

22 7. As a condition precedent to consummation of the sale and as adequate assurance of
23 future performance, the Buyer “shall have secured a lease performance bond as required by that
24 certain Ground Sublease, dated April 1, 2016, included in the Assigned Contracts and Assigned
25 Real Property Leases, which bond shall be satisfactory to the counterparty thereto.”
26 See APA, § 8.6. The Buyer is taking all necessary steps to obtain the lease performance bond,
27 including completion of Phase I Environmental Site Assessment as contemplated by APA
28

1 sections 5.1 and 8.8, and the Buyer will have the lease performance bond in place prior to the
2 Closing.

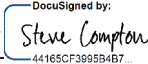
3 8. Buyer is a privately held company and so its financial information is not released
4 publicly and as such we have provided evidence of our financial wherewithal to the Debtor in the
5 form of an equity funding letter from Ontario Teachers' Pension Plan Board through its wholly
6 owned subsidiary Sevana BioEnergy OTPP Holdco LLC (together "**OTPP**") to the Debtor.
7 Additionally, upon request, Buyer is willing to provide (and has provided) additional information
8 to counterparties to the Assigned Contracts, Permits and Licenses, Assigned Personal Property
9 Leases, and Assigned Real Property Leases to further demonstrate adequate assurance of future
10 performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy
11 Code to the extent that any such assurance is required and not waived by the counterparties to
12 such Assigned Contracts, Permits and Licenses, Assigned Personal Property Leases, and
13 Assigned Real Property Leases.
14

15
16 9. The Assigned Contracts, Permits and Licenses, Assigned Personal Property
17 Leases, and Assigned Real Property Leases are an integral part of the Purchased Assets being
18 purchased by Buyer and, as such, the assumption and assignment of the Assigned Contracts,
19 Permits and Licenses, Assigned Personal Property Leases, and Assigned Real Property Leases are
20 reasonable and necessary to sell the Purchased Assets to Buyer and will enhance the value of the
21 Debtor's estates.
22

23 10. Considering the foregoing, I believe that Buyer has the financial wherewithal,
24 management expertise, and resources necessary to continue performing under any Assigned
25 Contracts, Permits and Licenses, Assigned Personal Property Leases, and Assigned Real Property
26 Leases associated with the Purchased Assets.
27
28

1 Dated: May 28, 2024

SEVANA BIOENERGY LLC

2 By: /s/ 
3 Steve Compton
4 President
5 Sevana Bioenergy LLC
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: One Vanderbilt Avenue, New York, NY 10017-3852

A true and correct copy of the foregoing document entitled **DECLARATION IN SUPPORT OF ORDER APPROVING THE FREEAND CLEAR SALE OF ASSETS TO SEVANA BIOENERGY LLC** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5006 and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 28, 2024** I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Annadel Angeline Almendras annadel.almendras@doj.ca.gov
- Christine E. Baur christine@baurbklaw.com, admin@baurbklaw.com
- Hagop T. Bedoyan hagop.bedoyan@mccormickbarstow.com
- Ron Bender rb@lnbyg.com, bry@lnbyb.com
- E. Alex Beroukhim alex.beroukhim@arnoldporter.com, e.alex.beroukhim@apks.com; sarah.gryll@arnoldporter.com; michael.messersmith@arnoldporter.com; ecf-e5794a63d7ef@ecf.pacerpro.com; Alexander.Hevia@arnoldporter.com
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- United States Trustee ustp.region15@usdoj.gov
- Cranston J Williams cwilliams3@socalgas.com
- Beth Ann R. Young bry@lnbyg.com
- Nahal Zarnighian zarnighiann@ballardspahr.com, carolod@ballardspahr.com

2. SERVED BY UNITED STATES MAIL: On **May 28, 2024**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 28, 2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

None.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 28, 2024

Date

Printed Name

Signature

MML	<u>Debtor</u> Rialto Bioenergy Facility, LLC 705 Palomar Airport Road Suite 200 Carlsbad, CA 92011	Big Sky Electric, Inc. 310 McArthur Way Suite A Upland, CA 91786-5630
R&S Industrial Field Service Inc. P.O.Box 2796 Victorville, CA 92393-2796	Berkley Insurance Company 412 Mount Kemble Avenue Suite 310N Morristown, NJ 85012	UMB Bank, N.A. c/o Ballard Spahr LLP 2029 Century Park East Suite 1400Los Angeles, CA 90067
Uline 1275 Uline Drive Pleasant Prairie, WI 53158	4747 Executive Drive, Suite 700 San Diego, California 92121-3107	Adler Tank Rentals 2751 Aaron Street Deer Park, TX 77536-1907
Alex Beroukhim Brian K. Condon 777 South Figueroa St., 44th Floor Los Angeles, CA 90017-5800	Adia Solutions LLC 4800 Deerwood Campus Parkway BLDG 800 Jacksonville, FL 32246-8319	Allison Electric Inc. 16835 Algonquin St. Ste. #291 Huntington Beach, CA 92649-3810
Adia Solutions LLC 3601 S. Congress Ave, Ste B500 Austin, TX 78704	<u>Creditor Committee</u> Aerzen USA Corp Attn: Michael Scotti, Credit Manager 108 Independence Way Coatesville, PA 19320	Avensys Solutions Inc 300 rue Stinson Saint-Laurent QC H4N 2E7 CANADA
BSK Associates PO Box 51931 Los Angeles, CA 90051-6231	Alliance Corporation 1067 S. Leslie Street La Habra, CA 90631-6843	Berkley Insurance Company Koeller Nebeker Carlson & Haluck, LLC c/o David W. Kash, Esq. 3800 N Central Street, Suite 1500Phoenix, AZ 85012-1916
Big Sky Electric, Inc. 310 McArthur Way, Suite A Upland, CA 91786-5630	Airgas USA LLC PO Box 93500 Long Beach, CA 90809-3500	Caltrol Inc. 1385 Pama Lane, Suite 111 Las Vegas, NV 89119
CSC P.O. Box 7410023 Chicago, IL 60674-5024	Cal-lift, Inc. 13027 Crossroads Parkway South City of Industry, CA 91746-3406	Caltrol Inc. PO Box 741123 Los Angeles, CA 90074-1123
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Irwindale, CA 91706-2025

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Ontario, CA 91762-4114

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NAES Corporation
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Issaquah, WA 98027-8106

PEOPLEREADY INC
ATTN TAMI L ZEIGLER
1015 A ST
TACOMA WA 98402-5122

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Ontario, CA 91762-4114

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White Hall, PA 18052-5734

Pacific Mechanical Construction
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RK Controls
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Commerce, CA 90040-1601

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PO Box 339
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SACRAMENTO CA 95812-2952

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UTS Bioenergy Holdings, LLC
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CSC – Lawyers
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Sacramento, CA 95833

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Technologies U.S. LLC
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Creditor Committee
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Turnkey Fabricators
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Anaheim Energy LLC
SoCal Organics Recycling Facility LLC
705 Palomar Airport Road Suite 200
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Anew Climate, LLC
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Bare Ground Inc.
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Los Angeles, CA 90051

Burrtec Waste Industries, Inc.
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Los Angeles, CA 90051-3142

Burrtec Waste Industries, Inc.
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Jurupa Valley, CA 92509-2404

Burrtec Waste Industries, Inc.
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Fontana, CA 92335

Chemtreat Inc.
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Cintas
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Russellville, AR 72811-3036

Denali Water Solutions
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Rialto, CA 92377-0800

Dept. of Resources Recycling
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Rialto Utility Authority
150 South Palms Avenue
Rialto, CA 92376

Rialto Water Services
PO Box 60450
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Rialto Water Services, LLC
150 California Street, #600
San Francisco, CA 94965

City of Rialto
c/o City Manager
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c/o Epps & Coulson, LLP
1230 Crenshaw Blvd., Suite 200
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Service of Adversary Proceedings
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P.O. Box 1720, MS A-260
Rancho Cordova, CA 95741-1720

California Franchise Tax Board
Bankruptcy Code Section 505
Requests & All Other Service &
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